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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 5, Original

STATE OF NEW JERSEY,

Complainant,

against

STATE OF NEW YORK and CITY OF NEW YORK,

Defendants,

COMMONWEALTH OF PENNSYLVANIA,

Intervenor.

MEMORANDUM ON BEHALF OF THE CITY OF NEW YORK IN OPPOSITION TO MOTION OF THE CITY OF PHILADELPHIA FOR LEAVE TO INTERVENE AND TO FILE AN ANSWER TO THE PETITION OF THE CITY OF NEW YORK FOR MODIFICATION OF DECREE.

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This memorandum is submitted in opposition to the motion of the City of Philadelphia for leave to intervene and file an answer to the petition of the City of New York in the above-entitled matter.

Present Status of the Action

In accordance with permission granted by this Court in its decree (283 U.S. 805), the City of New York, as one of the parties to the action, filed its petition dated April 1st, 1952 to amend the decree. The proposed amendments would

authorize the City to increase its diversion of water from tributaries of the Delaware River wholly in New York State and would require the City to increase its releases of compensation water during periods of low flow in the river.

The plaintiff, State of New Jersey, and the intervenor, Commonwealth of Pennsylvania, have respectively filed answers and amended answers to the petition.

Petition of the City of Philadelphia

The City of Philadelphia, although admitting (Motion, par. 2) that it "was not a party to the original proceedings in this Court as of October Term, 1930," moves the Court for leave to enter in this action now, and "to participate in all proceedings and hearings, offering evidence on its behalf as it considers relevant, appropriate and necessary." (p. 5) Inferentially it cites as authority for so doing that under the present Constitution of Pennsylvania, as implemented by the First Class City Home Rule Act adopted by the General Assembly of the Commonwealth of Pennsylvania, it now has the power so to intervene, independently of the Commonwealth of Pennsylvania. (Motion, par. 2)

In the answer appended to its petition, Philadelphia opposes the application of the City of New York on grounds almost identical with those taken by the Commonwealth of Pennsylvania and moves to dismiss the petition of the City of New York.

The Motion by the City of Philadelphia Should be Denied

On January 6th, 1930, this Court granted the motion of the Commonwealth of Pennsylvania to intervene in this action as *parens patriae* to protect the interests and welfare of its citizens.

In addressing itself to the petition filed in April 1952 by the City of New York, the Commonwealth of Pennsylvania in its answer and amended answer presents for consideration by this Court the interest of the City of Philadelphia in the waters of the Delaware (pars. 5 and 7):

The Commonwealth has already made the same contentions as Philadelphia now seeks to present separately.

Since the City of Philadelphia is a municipality of the intervenor Commonwealth and wholly subject (City of Trenton v. New Jersey, 262 U.S. 182, 187; City of Newark v. New Jersey, 262 U. S. 192, 196) to the latter's sovereignty, Philadelphia has no right to contest the exercise of that sovereignty or dispute the right of the Commonwealth to represent the City and its inhabitants before this Court in this action (Kentucky v. Indiana, 281 U.S. 163, 173).

In Kansas v. Colorado, 206 U.S. 46, Kansas was allowed to sue to restrain the diversion of water from the Arkansas River, an interstate stream. The Court, in upholding the right of Kansas to maintain the suit, stated, page 99:

> "It is not acting directly and solely for the benefit of any individual citizen to protect his riparian rights. Beyond its property rights it has an interest as a State in this large tract of land bordering on the Arkansas River. Its prosperity affects the general welfare of the State. The controversy rises, therefore, above a mere question of local private right and involves a matter of state interest, and must be considered from that standpoint. Georgia v. Tennessee Copper Co., decided this day, post, p. 230."

Philadelphia is not the only Pennsylvania community riparian to and interested in the Delaware River. According to Pennsylvania's amended answer (par. 26), Morrisville and the neighboring counties of southeastern Pennsylvania have a "vital" interest in the waters of the Delaware River. It would be most cumbersome if each riparian community were permitted to thrust aside the Commonwealth, acting as *parens patriae*, and speak for itself before the Court in this case.

CONCLUSION

The Application of the City of Philadelphia Should be Denied.

Dated: New York, February 5th, 1953.

Respectfully submitted,

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